

REFERENCE TITLE: health insurance; purchase outside state

State of Arizona
House of Representatives
Forty-ninth Legislature
First Regular Session
2009

HB 2486

Introduced by
Representatives Antenori, Gowan: Burges, Court, Hendrix, Seel, Stevens,
Weiers JP

AN ACT

AMENDING SECTIONS 20-115, 20-206, 20-215, 20-217, 20-220, 20-230 AND
20-401.01, ARIZONA REVISED STATUTES; RELATING TO PURCHASE OF HEALTH OR
SICKNESS INSURANCE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 20-115, Arizona Revised Statutes, is amended to
3 read:

4 20-115. Department jurisdiction over certain health care
5 providers; exception; examination; disclosure

6 A. Any person or other entity, including a provider sponsored
7 organization that operates under the Medicare-plus-choice program established
8 under the balanced budget act of 1997 (42 United States Code sections
9 1395w-21 through 1395w-28 and title XVIII, part C of the social security act,
10 sections 1851 through 1859), that provides coverage in this state for
11 medical, surgical, chiropractic, naturopathic medicine, occupational
12 therapy, physical therapy, speech pathology, audiology, professional mental
13 health, dental, hospital or optometric expenses, whether the coverage is by
14 direct payment, reimbursement or otherwise, is presumed to be subject to the
15 jurisdiction of the department unless the person or other entity shows that
16 while providing coverage it is subject to the jurisdiction of another agency
17 of this state, any political subdivision of this or any other state or the
18 federal government OR, IN THE CASE OF INSURERS OF THE SAME TYPE AS THOSE
19 SUBJECT TO SECTION 20-826, 20-1057, 20-1342, 20-1402 OR 20-1404 THAT ISSUE
20 POLICIES, CONTRACTS, PLANS, COVERAGES OR EVIDENCES OF COVERAGE, THAT ARE
21 DOMICILED OUTSIDE OF THIS STATE AND THAT TRANSACT HEALTH OR SICKNESS
22 INSURANCE IN THIS STATE, IF THE INSURER PROVIDES EVIDENCE TO THE DIRECTOR
23 THAT WHILE PROVIDING HEALTH OR SICKNESS INSURANCE THE INSURER IS SUBJECT TO
24 THE JURISDICTION OF ANOTHER STATE'S INSURANCE DEPARTMENT.

25 B. A person or entity that provides coverage for services identified
26 in subsection A OF THIS SECTION may show that it is subject to the
27 jurisdiction of another agency of this state, any political subdivision of
28 this or any other state or the federal government by providing to the
29 director the appropriate certificate, license or other document that is
30 issued by the other governmental agency and that permits or qualifies it to
31 provide those services.

32 C. Any person or entity that provides coverage in this state for
33 services described in subsection A OF THIS SECTION and THAT is unable to show
34 it is subject to the jurisdiction of another agency of this state, any
35 political subdivision of this or any other state or the federal government:

36 1. Shall submit to an examination by the director to determine the
37 organization and solvency of the person or the entity and to determine
38 whether or not the person or entity is in compliance with the applicable
39 provisions of this title.

40 2. Is subject to all appropriate provisions of this title regarding
41 the conduct of its business.

42 D. Any production agency or administrator which advertises, sells,
43 transacts or administers coverage in this state for services described in
44 subsection A OF THIS SECTION which is provided by any person or entity
45 described in subsection C OF THIS SECTION, if that coverage is not fully

1 insured or otherwise fully covered by an admitted life or disability insurer,
2 nonprofit hospital service plan or nonprofit health care plan, shall advise
3 any purchaser, prospective purchaser or covered person of the lack of
4 insurance or other coverage.

5 E. Any administrator which advertises or administers coverage in this
6 state for services described in subsection A OF THIS SECTION which is
7 provided by any person or entity described in subsection C OF THIS SECTION
8 shall advise any production agency of the elements of the coverage including
9 the amount of stop-loss insurance in effect.

10 F. This section does not apply to or prohibit a self-insured program
11 operated by a single employer for the benefit of its employees or the
12 employees of a wholly-owned subsidiary.

13 Sec. 2. Section 20-206, Arizona Revised Statutes, is amended to read:
14 20-206. Authority to transact insurance

15 A. No person shall act as an insurer and no insurer shall transact
16 insurance in this state except as authorized by a subsisting authority
17 granted to it by the director, except as to such transactions as are
18 expressly otherwise provided for in this title. No such authority shall be
19 required for an insurer, formerly so authorized, to enable it to investigate
20 and settle losses under its policies lawfully written in this state, or to
21 liquidate such assets and liabilities of the insurer, other than collection
22 of new premiums, as has resulted from its former authorized operations in
23 this state.

24 B. An insurer not transacting new insurance business in this state but
25 continuing collection of premiums on and servicing of policies remaining in
26 force as to residents of or risks located in this state, is transacting
27 insurance in this state for the purpose of premium tax requirements only and
28 is not required to have a certificate of authority ~~therefor~~. This subsection
29 shall not apply to insurers which have withdrawn from this state ~~prior to~~
30 ~~BEFORE~~ January 1, 1955.

31 C. As to an insurance coverage on a subject of insurance not resident,
32 located, or expressly to be performed in this state at time of issuance, and
33 solicited, written and delivered outside the state, no such authority shall
34 be required of an insurer as to subsequent transactions in this state on
35 account thereof.

36 D. NOTWITHSTANDING THIS SECTION, INSURERS OF THE SAME TYPE AS THOSE
37 SUBJECT TO SECTION 20-826, 20-1057, 20-1342, 20-1402 OR 20-1404 THAT ISSUE
38 POLICIES, CONTRACTS, PLANS, COVERAGES OR EVIDENCES OF COVERAGE AND THAT ARE
39 DOMICILED OUTSIDE OF THIS STATE MAY TRANSACT HEALTH OR SICKNESS INSURANCE IN
40 THIS STATE IF THE INSURER PROVIDES EVIDENCE TO THE DIRECTOR THAT WHILE
41 PROVIDING HEALTH OR SICKNESS INSURANCE THE INSURER IS SUBJECT TO THE
42 JURISDICTION OF ANOTHER STATE'S INSURANCE DEPARTMENT.

1 Sec. 3. Section 20-215, Arizona Revised Statutes, is amended to read:
2 20-215. Application for certificate of authority

3 A. To apply for an original certificate of authority an insurer shall
4 file with the director its application for a certificate of authority showing
5 its name, location of its home office or principal office in the United
6 States, if an alien insurer, kinds of insurance to be transacted, date of
7 organization or incorporation, form of organization, state or country of
8 domicile and such additional information as the director may reasonably
9 require, together with the following applicable documents:

10 1. If a foreign or alien insurer, a copy of its corporate charter with
11 all amendments to the charter certified by the public officer with whom the
12 originals are on file in the state or country of domicile.

13 2. A copy of its bylaws, as amended, certified by its secretary or
14 other officer having custody of the bylaws.

15 3. A copy of its annual statement as of December 31 last preceding.

16 4. A copy of the report of the last examination, if any, made of the
17 insurer, certified by the insurance supervisory official of its state of
18 domicile or of entry into the United States.

19 5. Appointment of the director as its attorney to receive service of
20 legal process if, as to a foreign or alien insurer, such an appointment is
21 not already on file.

22 6. Appointment of a statutory agent to receive service of legal
23 process, accompanied by his name and address, as to a domestic insurer.

24 7. If a foreign or alien insurer, a certificate of the public official
25 having supervision of insurance in its state or country of domicile showing
26 that it is authorized to transact the kinds of insurance proposed to be
27 transacted in this state.

28 8. If an alien insurer, a copy of the appointment and authority of its
29 United States manager, certified by its officer having custody of its
30 records.

31 9. If a foreign or alien insurer, a certificate as to deposit if to be
32 tendered pursuant to section 20-213.

33 B. NOTWITHSTANDING THIS SECTION, AN INSURER OF THE SAME TYPE AS THOSE
34 SUBJECT TO SECTION 20-826, 20-1057, 20-1342, 20-1402 OR 20-1404 THAT ISSUES
35 POLICIES, CONTRACTS, PLANS, COVERAGES OR EVIDENCES OF COVERAGE AND THAT IS
36 DOMICILED OUTSIDE OF THIS STATE IS NOT REQUIRED TO APPLY FOR A CERTIFICATE OF
37 AUTHORITY IN THIS STATE IF THE INSURER PROVIDES EVIDENCE TO THE DIRECTOR THAT
38 WHILE PROVIDING HEALTH OR SICKNESS INSURANCE IN THIS STATE THE INSURER IS
39 SUBJECT TO THE JURISDICTION OF ANOTHER STATE'S INSURANCE DEPARTMENT.

40 Sec. 4. Section 20-217, Arizona Revised Statutes, is amended to read:
41 20-217. Certificate of authority; term; termination; delivery

42 on termination or revocation

43 A. The certificate of authority issued by the director to an insurer
44 is evidence of its authority to transact in this state the kind of insurance
45 specified in the certificate, EXCEPT FOR INSURERS OF THE SAME TYPE AS THOSE

SUBJECT TO SECTION 20-826, 20-1057, 20-1342, 20-1402 OR 20-1404 THAT ISSUE POLICIES, CONTRACTS, PLANS, COVERAGES OR EVIDENCES OF COVERAGE, THAT ARE DOMICILED OUTSIDE OF THIS STATE AND THAT TRANSACT HEALTH OR SICKNESS INSURANCE IN THIS STATE IF THE INSURER PROVIDES EVIDENCE TO THE DIRECTOR THAT WHILE PROVIDING HEALTH OR SICKNESS INSURANCE THE INSURER IS SUBJECT TO THE JURISDICTION OF ANOTHER STATE'S INSURANCE DEPARTMENT.

B. A certificate of authority remains in effect until terminated at the request of the insurer or suspended or revoked by the director.

C. A certificate of authority remains the property of this state. ~~Upon~~ ON termination at the request of the insurer or revocation by the director, the insurer shall immediately deliver the certificate of authority to the director.

D. The director shall not grant the request of an insurer to terminate its certificate of authority if the insurer has any outstanding obligations under a policy of insurance to policyholders or claimants who are residents of this state. This subsection does not apply if the insurer has deposited with the state treasurer securities acceptable to the director in an amount equal to its liabilities, as computed by the director, including its reserves as required by this title in respect to its business in this state for the sole benefit of its policyholders and creditors who are residents of this state. The state treasurer shall hold and administer the deposits pursuant to chapter 3, article 3 of this title. This subsection does not apply if the insurer has fully reinsured such outstanding obligations with a reinsurer under an agreement filed with and approved in writing by the director pursuant to section 20-261. This subsection does not apply when the termination of the insurer's certificate of authority is the result of a merger or consolidation if the emerging or surviving insurer is or becomes authorized to transact business in this state and assumes such outstanding obligations of the terminating insurer.

E. The certificate of authority shall be suspended or revoked if the insurer fails to pay the annual certificate of authority fee denominated a renewal fee in section 20-167 at the time provided in section 20-223.

Sec. 5. Section 20-220, Arizona Revised Statutes, is amended to read:

20-220. Certificate of authority; refusal to renew; revocation or suspension; civil penalty

A. The director ~~may~~ after a hearing MAY refuse to renew or may revoke or suspend an insurer's certificate of authority, in addition to other grounds therefor in this title, if the insurer:

1. Violates any provision of this title other than a provision as to which refusal, suspension or revocation is mandatory.

2. Knowingly fails to comply with any lawful rule or order of the director.

3. Is found by the director to be in unsound condition or in such condition as to render its further transaction of insurance in this state hazardous to its policyholders or to the people of this state.

4. Usually compels claimants under its policies to accept less than the amount due them or to bring suit against it to secure full payment thereof.

5. Refuses to be examined or to produce its accounts, records and files for examination by the director when required.

6. Fails to pay any final judgment rendered against it in this state within thirty days after the judgment becomes final.

7. Is affiliated with and under the same general management or interlocking directorate or ownership as another insurer which transacts direct insurance in this state without having a certificate of authority therefor, except as permitted to a surplus lines insurer under article 5 of this chapter.

B. If after a hearing the director finds grounds pursuant to subsection A **OF THIS SECTION** to suspend or revoke an insurer's certificate of authority, the director may impose, in lieu of or in addition to such suspension or revocation, the following civil penalties:

1. A penalty not to exceed one thousand dollars for each violation and not to exceed an aggregate of ten thousand dollars within any six-month period with respect to unintentional violations.

2. A penalty not to exceed five thousand dollars for each violation and not to exceed an aggregate of fifty thousand dollars within any six-month period with respect to intentional violations. The insurer shall pay the civil penalty to the director who shall deposit it, pursuant to sections 35-146 and 35-147, in the state general fund. The civil penalty is in addition to any other penalty imposed by law.

C. The director may adopt rules to provide the criteria to be used for identifying insurers who are found to be in a condition that would render the continuance of their business hazardous to their policyholders or the people of this state.

D. THIS SECTION DOES NOT APPLY TO INSURERS OF THE SAME TYPE AS THOSE SUBJECT TO SECTION 20-826, 20-1057, 20-1342, 20-1402 OR 20-1404 THAT ISSUE POLICIES, CONTRACTS, PLANS, COVERAGES OR EVIDENCES OF COVERAGE, THAT ARE DOMICILED OUTSIDE OF THIS STATE AND THAT TRANSACT HEALTH OR SICKNESS INSURANCE IN THIS STATE IF THE INSURER PROVIDES EVIDENCE TO THE DIRECTOR THAT WHILE PROVIDING HEALTH OR SICKNESS INSURANCE THE INSURER IS SUBJECT TO THE JURISDICTION OF ANOTHER STATE'S INSURANCE DEPARTMENT.

Sec. 6. Section 20-230, Arizona Revised Statutes, is amended to read:
20-230. Retaliation

A. When by or pursuant to the laws of any other state or foreign country any premium or income or other taxes, or any fees, fines, penalties, licenses, deposit requirements or other material obligations, prohibitions or restrictions are imposed upon insurers of this state doing business, or that might seek to do business in such other state or country, or upon the agents of such insurers, which in the aggregate are in excess of such taxes, fees, fines, penalties, licenses, deposit requirements or other obligations,

1 prohibitions or restrictions directly imposed upon similar insurers of such
 2 other state or foreign country under the statutes of this state, ~~so~~ AS long
 3 as such laws continue in force or are so applied, the same obligations,
 4 prohibitions and restrictions of whatever kind shall be imposed upon similar
 5 insurers of such other state or foreign country doing business in
 6 Arizona. Any tax, license or other obligation imposed by any city, county or
 7 other political subdivision of a state or foreign country on insurers of this
 8 state or their agents shall be deemed to be imposed by such state or foreign
 9 country within the meaning of this section. For the purpose of this section,
 10 the director shall compute the burden of any tax, license or other obligation
 11 imposed by any city, county or other political subdivision of a state or
 12 foreign country on insurers of this state or their agents on an aggregate
 13 statewide or foreign countrywide basis as an addition to the rate of tax
 14 payable by Arizona insurers in such state or foreign country. The addition
 15 to the rate of tax payable by Arizona life insurers shall be calculated
 16 separately from the addition to the rate of tax payable by other Arizona
 17 insurers. In each case, the addition to the rate of tax payable by Arizona
 18 insurers shall be calculated by dividing the aggregate of the tax obligations
 19 paid by Arizona insurers to any such city, county or other political
 20 subdivision of such state or foreign country by the aggregate of their
 21 taxable premiums under the premium taxing statute of such state or foreign
 22 country. The director may issue rules to carry out the purpose of this
 23 section. ~~The provisions of~~ This section ~~shall~~ DOES not apply to ad valorem
 24 taxes on real or personal property or to personal income taxes or to
 25 assessments on or credits to insurers for the payment of claims of
 26 policyholders of insolvent insurers. THE RETALIATORY TAX IMPOSED BY THIS
 27 SUBSECTION DOES NOT APPLY TO INSURERS OF THE SAME TYPE AS THOSE SUBJECT TO
 28 SECTION 20-826, 20-1057, 20-1342, 20-1402 OR 20-1404 THAT ISSUE POLICIES,
 29 CONTRACTS, PLANS, COVERAGES OR EVIDENCES OF COVERAGE, THAT ARE DOMICILED
 30 OUTSIDE OF THIS STATE AND THAT TRANSACT HEALTH OR SICKNESS INSURANCE IN THIS
 31 STATE IF THE INSURER PROVIDES EVIDENCE TO THE DIRECTOR THAT WHILE PROVIDING
 32 HEALTH OR SICKNESS INSURANCE THE INSURER IS SUBJECT TO THE JURISDICTION OF
 33 ANOTHER STATE'S INSURANCE DEPARTMENT.

34 B. If an insurer domiciled in this state is refused authority to
 35 transact INSURANCE in another state ~~insurance~~ upon a plan and in a manner
 36 which is permitted for domestic insurers of such other state, notwithstanding
 37 that the insurer of this state is fully qualified for such authority in
 38 accordance with the applicable laws of such other state, and if such refusal
 39 is not accompanied by a written statement of the grounds therefor, then and
 40 thereafter, and for ~~so~~ AS long as such refusal shall continue, the director
 41 may refuse to grant an initial certificate of authority, but not a renewal of
 42 an existing certificate of authority, to any insurer domiciled in such other
 43 state which may seek to transact in this state a like kind or kinds of
 44 insurance.

1 Sec. 7. Section 20-401.01, Arizona Revised Statutes, is amended to
2 read:

3 20-401.01. Unlawful transaction of insurance business:
4 exemptions

5 A. It is unlawful for any insurer to transact insurance business, as
6 provided by section 20-106, in this state without a certificate of authority
7 from the director.

8 B. The provisions of subsection A of this section do not apply to:

9 1. The lawful transaction of surplus lines insurance.

10 2. The lawful transaction of reinsurance by insurers.

11 3. Transactions in this state involving a policy lawfully solicited,
12 written and delivered outside of this state covering only subjects of
13 insurance not resident, located or expressly to be performed in this state at
14 the time of issuance, and which transactions are subsequent to the issuance
15 of such policy.

16 4. Attorneys acting in the ordinary relation of attorney and client in
17 the adjustment of claims or losses.

18 5. Transactions in this state involving group annuities where the
19 master policy of such groups was lawfully issued and delivered in and
20 pursuant to the laws of a state in which the insurer was authorized to do an
21 insurance business, to a group organized for purposes other than the
22 procurement of insurance, and where the policyholder is domiciled or
23 otherwise has a bona fide situs.

24 6. Transactions in this state involving any policy of insurance or
25 annuity contract issued ~~prior to~~ BEFORE August 13, 1972.

26 7. Transactions in this state relative to a policy issued or to be
27 issued outside this state involving insurance on vessels, craft or hulls,
28 cargoes, marine builder's risk, marine protection and indemnity or other
29 risk, including strikes and war risks commonly insured under ocean or wet
30 marine forms of policy.

31 8. Transactions in this state involving contracts of insurance not
32 readily obtainable from insurers authorized to transact insurance in this
33 state issued to one or more industrial insureds, as defined in section
34 20-401.07.

35 9. INSURERS OF THE SAME TYPE AS THOSE SUBJECT TO SECTION 20-826,
36 20-1057, 20-1342, 20-1402 OR 20-1404 THAT ISSUE POLICIES, CONTRACTS, PLANS,
37 COVERAGES OR EVIDENCES OF COVERAGE, THAT ARE DOMICILED OUTSIDE OF THIS STATE
38 AND THAT TRANSACT HEALTH OR SICKNESS INSURANCE IN THIS STATE IF THE INSURER
39 PROVIDES EVIDENCE TO THE DIRECTOR THAT WHILE PROVIDING HEALTH OR SICKNESS
40 INSURANCE THE INSURER IS SUBJECT TO THE JURISDICTION OF ANOTHER STATE'S
41 INSURANCE DEPARTMENT.